The reasoning on which the prevailing opinion of the court is based is that the plaintiff could not have asked to exercise his option before the end of the year, and that the year did not end until midnight of October 4, 1913; that therefore "at" must be taken to mean "after" here, and that a reasonable time after should be given the plaintiff. It was then decided that the court could not say as a matter of law that twelve days after the date of expiration of the time stated was an unreasonable length of time. Justice HALLAM, dissenting, takes the view that the date on which the option expires is the date on which it must be exercised; that "at the end of" fixes a definite time which should not be extended by the court, and this definite time is the last day of the year over which the option runs and not the day after. Justice HOLT, dissenting, holds with the trial court that the option should be exercised on the day after the expiration of the year, and if not exercised then it is lost. The opinion of the court would seem to rest on the assumption that time is not of the essence of this contract, and the reasoning is sustained by the cases of *Rogers* v. *Burr,* 97 Ga. 10, 25 S. E. 339; *LaDow* v. *Bement,* 119 Mich. 685, 79 N. W. 1048. As pointed out in *Magoffin* v. *Holt,* 62 Ky. (1 Duv.) 95, however, the general rule that time is not of the essence of contracts for the sale of land does not apply in option contracts of this kind, for the reason that the person having the option does not have the equitable interest in the right to resell that is the basis for the general rule. That time is of the essence of a contract to purchase land "at the expiration" of a lease, and that the option must be exercised on the day following the expiration, is held in *Herman* v. *Winter,* 20 S. D. 196, 105 N. W. 457. Since time is the substance of an option contract, the thing for which consideration is given, it would seem that the extension of time by the court is in effect making a new contract for the parties. In computing time in similar contracts the general rule seems to be that the day on which the contract is dated is excluded and the day on which it expires is included. *Weld* v. *Barber,* 153 Pa. St. 465, 26 Atl. 239; *Buttrick* v. *Holden,* 8 Cush. (Mass.) 233; *Annan* v. *Baker,* 49 N. H. 161. These cases sustain the view of Justice HOLT that the time for the exercise of the option is on the day following the expiration of the year designated. Sustaining the holding of Justice HALLAM that the time for exercise of the option is on the day the year expires, and not after, is the case of *Tilton* v. *Sterling Coal & Coke Co.,* 28 Utah, 173, 77 Pac. 758.

CREDITORS' SUIT—NECESSITY OF PRIOR JUDGMENT.—A creditor brings suit to set aside a fraudulent conveyance. The debtor is insolvent, has no property subject to levy, and is not within the jurisdiction. *Held,* not necessary that the debt should have first been reduced to judgment. *Williams et al.* v. *Adler-Goldman Commission Co. et al.* (C. C. A. 1915), 227 Fed. 374.

The general rule is that before a fraudulent conveyance will be set aside the debt must be reduced to judgment followed by execution and return *nulla bona;* the judgment and fruitless execution are conclusive evidence that there is no adequate remedy at law. But if it appears by other evi-

dence that there is no such remedy, the reason for the rule fails and an exception must be recognized. If it is shown that the debtor is without the jurisdiction and has no attachable property within the jurisdiction, the fact is then clearly established that there is no remedy at law within the jurisdiction. And practically all authorities would upon such a showing allow a suit in equity to set aside a fraudulent conveyance. *National Tube Works Co.* v. *Ballou,* 146 U. S. 517; *Patchen* v. *Rofkar,* 12 App. Div. (N. Y.) 475; *Bateman* v. *Hunt,* 94 N. Y. Supp. 811; *Williams* v. *Kemper,* 99 Minn. 301, 304; *Webb* v. *Midway Lumber Co.,* 68 Mo. App. 546; *Pendelton* v. *Perkins,* 49 Mo. 565; *Merchants' Nat. Bank* v. *Paine,* 13 R. I. 592; *Ginn* v. *Brown,* 14 R. I. 524, 526; *Fraser* v. *Cole,* 214 Fed. 556. The principal case, however, adopts too broad a proposition in stating that non-residence of the debtor is in itself sufficient to create an exception to the rule; even though the debtor is non-resident, he may nevertheless have sufficient attachable property within the jurisdiction to satisfy the debt. It has even been held that where a statute gives the creditor a right to attach the property fraudulently conveyed, the general rule must be adhered to. *Greenway* v. *Thomas,* 14 Ill. 270; *Dewey* v. *Eckert,* 62 Ill. 218. But it must be remembered that a court of equity has inherent power to render judgments only in personam and, in the absence of a statute increasing its power, such court can therefore render no decision against a non-resident defendant who is to be active in the performance of the decree. *Reese* v. *Bradford,* 13 Ala. 837; *Sanders* v. *Watson,* 14 Ala. 198; *Smith* v. *Moore,* 35 Ala. 76. The second exception pointed out by the court in the principal case likewise seems too broad; for, though the debtor be insolvent, he may nevertheless have title to sufficient property to discharge the debt, and under such a circumstance there would be an adequate remedy at law. *Taylor* v. *Gillean,* 23 Tex. 508; *Lawson* v. *Grub,* 44 Ga. 466; *Mebane* v. *Layton,* 86 N. C. 571, 573 (*obiter*). It must be admitted, however, that the statement in the principal case is in accord with the statements of most courts. *Case* v. *Beauregard,* 101 U. S. 688. But where such statement is made, it is fair to assume that the court considers an allegation of the debtor's insolvency as equivalent to an allegation that the debtor has no attachable property. *Armstrong* v. *Keifer,* 39 Ind. 225; *Banker* v. *Kelsey, 72* Ind. 51. Some courts hold that the fact that a debtor would be unable to satisfy a judgment at law does not dispense with the necessity of securing such judgment, for the debtor should be allowed to contest the legal question of the debt in a court of law before a jury. *Kent* v. *Curtis,* 4 Mo. App. 121; *Ginn* v. *Brown,* 14 R. I. 524; *Austin* v. *Bruner,* 169 Ill. 178; *Allyn* v. *Thurston,* 53 N. Y. 622; *Ester* v. *Wilcox,* 67 N. Y. 264; *Wickliffes* v. *Lyon,* 5 J. J. Marsh (Ky.), 84. Still other courts hold that in such a case an officer's return *nulla bona* also is necessary, for such return furnishes the most satisfactory evidence that there is no adequate remedy at law and the rule induces uniformity and precludes uncertainty. *Shea* v. *Dulin,* 3 McArth. 339; *McElwaine* v. *Willis,* 9 Wend. (N. Y.) 548; *Crippin* v. *Hudson,* 13 N. Y. 161; *Beardsley Scythe Co.* v. *Foster,* 36 N. Y. 561; *Adsit* v. *Butler,* 87 N. Y. 585; *National Tradesman's Bank* v.

Wetmore, (obiter), 124 N. Y. 241; *Stone* v. *Westcott,* 18 R. I. 517. The Supreme Court of the United States adopted the same rule in *Jones* v. *Green,* 1 Wall. 330. But this court completely upset this rule in *Case* v. *Beauregard,* supra, by going so far as to say that in such a case even a judgment is unnecessary. In *Sage* v. *Memphis, etc., R. R.,* 125 U. S. 361, the court was of opinion that suing out execution is unnecessary where it would be "an idle ceremony."

EVIDENCE—SUFFICIENCY OF PROOF IN ACTIONS FOR LIBEL AND SLANDER.—In an action for slander for charging the plaintiff with "living" with another man and being a "sport," *held,* that something more than a preponderance of evidence was necessary to enable the plaintiff to recover. *Sterkx* v. *Sterkx* (La. 1915), 70 So. 428.

The question as to the degree of proof required in an action for libel or slander has usually arisen upon a plea of justification where the action was brought for imputing to the plaintiff the commission of a crime. In such cases, the courts have differed as to the rule which should be applied; but by the great weight of American authority, the rule now is that all that is required of the defendant is that he establish his justification by a preponderance of the evidence and not beyond a reasonable doubt. *Hearne* v. *De Young,* 119 Cal. 670, 52 Pac. 150, 499; *Tunnell* v. *Ferguson,* 17 Ill. App. 76; *Wintrode* v. *Renbarger,* 150 Ind. 556, 50 N. E. 570; *Sloan* v. *Gilbert,* 75 Ky. 51, 23 Am. St. Rep. 708; *Ellis* v. *Buzzell,* 60 Me. 209; *Peoples* v. *Evening News Ass'n,* 51 Mich. 11, 16 N. W. 185; *Edwards* v. *Geo. Knapp & Co.,* 97 Mo. 432, 10 S. W. 54; *Bell* v. *McGinness,* 41 Oh. St. 204; *Sacchitti* v. *Fehr,* 217 Pa. St. 475, 66 Atl. 742; *Lay* v. *Linke,* 122 Tenn. 433, 123 S. W. 746. The question as to whether the plaintiff in slander cases must make his case by more than a mere preponderance of evidence does not seem often to have arisen. *D'Echaux* v. *D'Echaux,* 133 La. 123, 62 So. 597. The contention has been made in other civil cases of a so-called criminal nature, but the rule has generally been repudiated. *Welch* v. *Jugenheimer,* 56 Ia. 11, 8 N. W. 673; WIGMORE, § 2498, though something more is sometimes required in cases of fraud. *Lalone* v. *United States,* 164 U. S. 255. But see *Nelms* v. *Steiner Bros.* 113 Ala. 562, 22 So. 435. The consequences of such actions are wholly civil and in no way criminal. Where all that is required of the defendant in slander cases is that he prove the commission of the crime by a preponderance of the evidence, *a fortiori,* no greater degree of proof would be required of the plaintiff in establishing his case. The instant case follows the holding in *D'Echaux* v. *D'Echaux,* supra, and all that is said in that case which is in point is quoted in the instant case. No authorities are cited to sustain the decision. It is submitted that the rule herein announced is not in accord with the weight of American authority and that the cases *contra* express the better rule.

HUSBAND AND WIFE—CONVEYANCE BY MARRIED WOMAN.—Article 10, § 6, of the Constitution of North Carolina provides that "the real * * * property of any female * * * may * * * with the written assent of her husband be conveyed by her as if she were unmarried." Public Laws of North Caro-